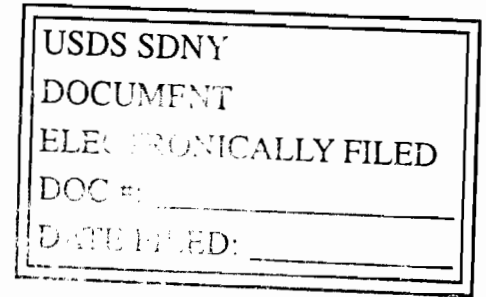


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



HECTOR LUIS MARTINEZ,

Plaintiff,

-v-

MICHAEL J. ASTRUE as Commissioner of Social
Security,¹

Defendant.

No. 06-CV-6219 (KMK) (LMS)

ORDER ADOPTING REPORT
AND RECOMMENDATION

KENNETH M. KARAS, District Judge:

Hector Luis Martinez (“Plaintiff”) brought this action pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), seeking judicial review of the Commissioner of Social Security’s (the “Commissioner”) finding that he was not entitled to supplemental security income under the Social Security Act. Plaintiff has moved for judgment on the pleadings. (Dkt. No. 12.) The Commissioner has moved for a reversal of his decision and a remand to the Social Security Administration (“SSA”) for further administrative proceedings pursuant to the fourth sentence of 42 U.S.C. § 405(g). (Dkt. No. 16.) On January 11, 2010, Magistrate Judge Lisa Margaret Smith filed a Report and Recommendation (“R&R”) recommending that this Court deny Plaintiff’s motion, and grant the Commissioner’s motion. (Dkt. No. 23.) Neither party has objected to this recommendation.

¹ Michael J. Astrue, the current Commissioner of Social Security, took office as of February 12, 2007. Pursuant to Fed. R. Civ. P. 25(d)(1), he is automatically substituted as Defendant for his predecessor in office, Jo Anne B. Barnhart, who had been named as defendant in Plaintiff’s Complaint.

A district court reviewing a magistrate judge's report and recommendation addressing a dispositive motion "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see Donahue v. Global Home Loans & Fin., Inc.*, No. 05-CV-8362, 2007 WL 831816, at *1 (S.D.N.Y. Mar. 15, 2007). Under 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, parties may submit objections to the magistrate judge's report and recommendation. The objections must be "specific" and "written," Fed. R. Civ. P. 72(b)(2), and must be made "[w]ithin 10 days after being served with a copy of the recommended disposition," *id.*; *see also* 28 U.S.C. § 636(b)(1), plus an additional three days when service is made pursuant to Fed. R. Civ. P. 5(b)(2)(C)-(F), *see* Fed. R. Civ. P. 6(d), as was the case here (R&R 2).

Where a party submits timely objections to a report and recommendation, the district court reviews de novo the parts of the report and recommendation to which the party objected. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); *Donahue*, 2007 WL 831816, at *1. "However, where a party does not submit an objection, a district court need only satisfy itself that there is no clear error on the face of the record." *Donahue*, 2007 WL 831816, at *1 (internal quotation marks omitted); *see also Eisenberg v. New England Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008) (The district court "may adopt those portions of the . . . report [and recommendation] to which no 'specific written objection' is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law." (quoting Fed. R. Civ. P. 72(b)(2)). "In addition, a party's failure to submit an objection will waive that party's right to challenge the report and recommendation on appeal." *Donahue*, 2007 WL 831816, at *1.

Here, neither party has filed objections to Magistrate Judge Smith's R&R. Thus, the Court has reviewed the R&R for clear error. Finding none, the Court adopts the R&R in its entirety. Accordingly, the Court remands this case to the Commissioner, but urges that it be given expedited consideration, in light of the fact the Mr. Martinez filed his claim with the SSA almost six years ago. *See Zwick v. Apfel*, No. 97-CV-5140, 1998 WL 426800, at *10 (S.D.N.Y. July 27, 1997) (making similar request for expedited review on remand).²

Therefore, it is hereby

ORDERED that the Report and Recommendation dated January 11, 2010 is ADOPTED in its entirety. It is further

ORDERED that Plaintiff's motion for judgment on the pleadings is DENIED. It is further

ORDERED that the Commissioner's motion is GRANTED. It is further


ORDERED that the Commissioner's determination is reversed, and the matter remanded for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). It is further

² Plaintiff has asked the Court to direct that the Commissioner render a final decision within sixty days. While the Court is not unsympathetic to Plaintiff's situation, this is an extraordinary request. *See Qwest Communications Intern., Inc. v. F.C.C.*, 398 F.3d 1222, 1238-39 (10th Cir. 2005) ("[A] court-imposed deadline for agency action constitutes an extraordinary remedy."); *In re Int'l Chem. Workers Union*, 958 F.2d 1144, 1149 (D.C. Cir.1992) ("[I]n extraordinary circumstances, this court will review claims of unreasonable agency delay."). In deciding whether to impose a deadline on an administrative agency, courts look to four factors: (1) the extent of the delay; (2) the reasonableness of the delay in the context of the legislation authorizing agency action; (3) the consequences of the delay; and (4) administrative difficulties bearing on the agency's ability to resolve an issue. *See In re Int'l Chem. Workers Union*, 958 F.2d at 1149-50; *Qwest*, 398 F.3d 1222 at 1238-39. Having weighed these factors, the Court declines to impose a specific deadline here.

ORDERED that the Clerk of the Court is respectfully directed to terminate the pending motions (Dkt. Nos. 12, 16), and to close this case.

SO ORDERED.

Dated: January 30, 2010
White Plains, New York


KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE

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Honorable Lisa Margaret Smith
United States Magistrate Judge